

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

|                          |   |                       |
|--------------------------|---|-----------------------|
| UNITED STATES OF AMERICA | ) | CRIMINAL NO.          |
|                          | ) |                       |
| v.                       | ) | Count 1: [Wire Fraud] |
|                          | ) | 18 U.S.C. §1343       |
| GREGORY S. HORTON        | ) |                       |
|                          | ) |                       |
| Defendant                | ) |                       |

STATEMENT OF FACTS

If this matter were to proceed to trial, the United States would prove the following beyond a reasonable doubt.

I. INTRODUCTION

1. America Online, Inc., (hereinafter "AOL"), a wholly owned subsidiary of Time Warner, Inc., was engaged in Internet interactive services and electronic commerce. AOL was headquartered in Dulles, Virginia.

2. AutoNation, Inc., (hereinafter "AutoNation") owned and managed over 200 new and used automobile dealerships throughout the United States. AutoNation was headquartered in Fort Lauderdale, Florida.

3. Qwest Communications, Inc. (hereinafter "Qwest") was a provider of telecommunications services and equipment throughout the United States. Qwest was headquartered in Denver, Colorado.

4. The defendant GREGORY S. HORTON resided in Palm Beach County, Florida, and Herndon, Virginia. In May 1999 defendant HORTON was hired by AutoNation, first as a Director of Human Resources and later as Vice President of Human Resources, responsible for Human Resources Field Operations, Labor

Relations, and Strategic Planning and Diversity. Defendant HORTON served at AutoNation until approximately October 2001, at which time he joined Qwest in Denver, Colorado, as Senior Vice President of Human Resources-World Wide Operations. At Qwest defendant HORTON was responsible for Human Resources Field Operations, Corporate Staff Support for the Chief Operating Officer. In November 2002, defendant HORTON left Qwest and became the Executive Vice President of Human Resources at AOL in Dulles, Virginia. At AOL defendant HORTON served as the company's highest Human Resources Officer, reporting directly to AOL's Chief Operating Officer. With AutoNation, Qwest, and AOL, defendant HORTON either had authority to approve or the ability to influence the hiring of outside consultants to perform services in the field of human resources for each of the companies.

5. With two partners, defendant HORTON owned and controlled HRC Realty, L.L.C., which owned properties in Florida, and Advanced Peoples Solutions, L.L.C., a staffing company located in Fort Lauderdale, Florida.

## II. THE SCHEME AND ARTIFICE TO DEFRAUD

6. As set forth below, beginning in approximately June 2000 and continuing until approximately August 2003 in Fort Lauderdale, Florida; Denver, Colorado; and Dulles, Virginia, the defendant HORTON, with the assistance of others, engaged in a

scheme and artifice to defraud AutoNation, Qwest, and AOL by enriching himself with company funds paid to outside consultants, ostensibly hired to perform human resources related services for AutoNation, Qwest, and AOL.

AUTONATION AND COMPANY #1

7. In approximately June 2000, defendant HORTON agreed with the principal of Company #1, a staffing company in Atlanta, Georgia, that Company #1 would perform staffing work for AutoNation and, as a result of that agreement, would make payments to defendant HORTON. As part of that agreement, beginning in June 2000 and continuing until October 2001, the principal of Company #1 invoiced AutoNation (and subsequently received) a total of \$614,995.05 for various staffing or recruiting work performed on behalf of AutoNation. In accordance with the understanding he had with defendant HORTON, beginning in August 2000 and ending in September 2002, in a series of 11 checks, the principal of Company #1 paid HRC Realty a total of \$213,798.37.

AUTONATION AND COMPANY #2

8. In approximately September 2000, defendant HORTON obtained the assistance of Company #2, a small health care consulting company in Birmingham, Alabama. Defendant HORTON arranged for Company #2 to bill AutoNation for miscellaneous staffing services and exit interviewing. Defendant HORTON

explained to the principal of Company #2 that any such work would not be done by him (Company #2) but would be done by a company affiliated with defendant HORTON. With the assistance of AutoNation employee, Mr. X, defendant HORTON caused the invoices from Company #2 to be prepared, submitted, and approved by AutoNation. In return for an ownership interest in HRC Realty, Mr. X agreed to assist defendant HORTON in preparing the work product, ostensibly performed by Company #2. Beginning in October and continuing until December 2000 invoices from Company #2 in the total amount of \$366,600 were submitted to, and paid by, AutoNation.

9. With the assistance of another person, Mr. Y, defendant HORTON arranged for the AutoNation checks, payable to Company #2, to be deposited into an account of the Amalgamated Bank in the Washington, D.C. metropolitan area, controlled by Mr. Y. From that account, in December 2000 and January 2001, two checks, each in the amount of \$12,500, were made payable and sent to the principal of Company #2. Mr. Y was allowed to receive \$5000 from the account. In December 2000 and January 2001, defendant HORTON directed Mr. Y to write two checks to HRC Realty for a total amount of \$219,950. In January 2001, defendant HORTON also directed Mr. Y to write a \$50,000 check to Advanced People Solutions. Defendant HORTON directed Mr. Y to make payments as

well to a family member and an associate of defendant HORTON in the total amount of \$66,650.

AUTONATION AND COMPANY #3

10. In approximately August 2000 defendant HORTON arranged with a college friend, who was the principal of Company #3, to serve as an apparent general contractor on an AutoNation employee training project involving the automation of the payroll process, web design, payroll administration. Defendant HORTON told the principal of Company #3 that Company #3 did not have to perform any services on the projects other than to pay vendors. Actual work performed on the payroll training was performed in-house by Mr. X, with the assistance of Company #4, a recognized Human Resources consultant. Defendant HORTON and Mr. X prepared Company #3's invoices and submitted them to AutoNation for payment. From approximately August 2000 through June 2001, AutoNation paid \$1,169,500 to Company #3, for work performed on the payroll training projects. Based upon directions from defendant HORTON, beginning in September 2000 and continuing until September 2001, the principal of Company #3 paid HRC Realty \$598,000, Advanced People Solutions \$239,300, and HBNS, a small company owned in part by defendant HORTON, \$10,000. Defendant HORTON also directed the principal of Company #3 to pay \$218,500 to two family members of Defendant HORTON. Defendant HORTON and Mr. X arranged for Company #3, rather than AutoNation, to pay

Company #4 \$75,000 for its work actually performed on the payroll training project. Defendant HORTON allowed the principal of Company #3 to keep approximately \$17,000 of AutoNation funds.

AUTONATION AND COMPANY #4

11. In August 2001 defendant HORTON negotiated a contract with Company #4 to implement over five quarters (16 months) 20 AutoNation payroll training programs nationwide. Defendant HORTON told the principal of Company #4, in determining the price it would charge AutoNation, to set aside \$80,000 for Company #3. The principal of Company #4 agreed to do this and signed a contract with AutoNation to implement the payroll training program for \$235,000. In September 2001, defendant HORTON told the principal of Company #4 to send \$60,000 to Company #3, which he did on September 4, 2001.

12. In March 2002, although he had moved on to Qwest in Denver, Colorado, defendant HORTON, with the assistance of Mr. X, who was still at AutoNation, arranged for Company #4 to receive \$100,000 for preparing an AutoNation employee survey. In working out the arrangements with Company #4, defendant HORTON entered into an agreement with the principal of Company #4 that Company #4 would sent \$40,000 to HRC Realty, which it did on April 18, 2002.

QWEST AND COMPANIES #4 AND #5

13. In approximately July 2002, defendant HORTON arranged for Company #4 to implement for Qwest an employee entry-level selection procedure. Defendant HORTON told the principal of Company #4 that he wanted for himself \$200,000 from the contract. To further insulate himself from the receipt of any payments from Company #4, defendant HORTON had recently directed Mr. Y to form a staffing company, Company #5, owned by Mr. Y. Defendant HORTON explained to the principal of Company #4 that a transfer of funds to Company #5 was a transfer to a company that he (HORTON) did not own and would not be traceable to him. The principal of Company #4 agreed to the arrangement. On September 23, 2002, at the direction of defendant HORTON, Mr. Y sent an invoice to Company #4 in the amount of \$200,00 for "consulting services with Q." After receiving partial payment on the Qwest contract, the principal of Company #4, on October 2, 2002, sent a \$200,000 check to Company #5.

14. Also on September 23, 2002, at the direction of defendant HORTON, Mr. Y sent an invoice to Company #4 in the amount of \$65,000 for "consulting services provided through AN." Since Company #4 was continuing to do business with AUTONATION, defendant HORTON had arranged with the principal of Company #4 to make a \$65,000 payment to Company #5, which he did on September 28, 2002.

15. On July 16, 2002, defendant HORTON caused Company #5 to send a fraudulent invoice to Qwest for \$133,000 for "Retained Services Provided--3 Positions." No such services were rendered to Qwest. With defendant HORTON'S approval, Qwest sent the \$133,000 payment to Company #5 on August 28, 2002.

\_\_\_\_16. In October 2002, defendant HORTON caused the principal of Company #5 to pay \$110,000 to HRC Realty, \$61,183.17 to defendant HORTON, \$50,000 to another company controlled by defendant HORTON, and \$150,000 to Advanced People Solutions.

AOL AND COMPANY #4

17. In January 2003, employed as AOL'S Executive Vice President for Human Resources, defendant HORTON caused AOL to hire Company #4 as a consultant on specific Human Resources initiatives. Each initiative was described under the consulting agreement as a separate "Statement of Work." Defendant HORTON purposely broke down the statements of work in such a way that each assignment would not create a high level of scrutiny by other AOL officials. Defendant Horton told the principal of Company #4 that he had created "Statement of Work #5" as a means by which funds could be transferred back to him (defendant HORTON). Statement of Work #5, with a \$100,000 fee to Company #4, was ostensibly a detailed review of a survey of AOL'S call center employees--a survey that had already been prepared and reviewed in-house. With a promise of more work to come,



defendant HORTON told the principal of Company #4 to transfer the \$100,000, received under Statement of Work #5, to Company #5.

Defendant Horton then arranged for the principal of Company #5 to send an invoice to Company #4 on April 28, 2003, billing Company #4 for \$100,000, for "staffing of 5 executive positions (V.P. and above)" as the first payment due in a projected series of three payments, totaling \$375,000. The principal of Company #4 sent the \$100,000 payment to Company #5 on April 28, 2003.

17. Three weeks later, on May 19, 2003, defendant HORTON directed the principal of Company #5 to pay \$85,000 to HRC Realty. Defendant HORTON allowed Mr. Y, the principal of Company #5, to receive over, a one year period, approximately \$27,000 from Company #5.

18. In August 2003 defendant HORTON resigned from AOL.

#### THE USE OF AN INTERSTATE WIRE COMMUNICATION

19. On or about April 10, 2003, the defendant HORTON caused an AOL employee, in Dulles, Virginia, to send via email to the principal of Company #4, located outside of the Commonwealth of Virginia, a draft of the contract listed as "Statement of Work #5" with instructions to print, sign, and forward the original contract to an AOL official.

TOTAL LOSS TO AUTONATION, QWEST, AND AOL

20. As a result of the aforesaid scheme and artifice to defraud his former employers, defendant HORTON caused the total loss of \$2,233,208.70 as follows:

AUTONATION:       \$1,800,208.70

QWEST:             \$ 333,000.00

AOL:               \$ 100,000.00

Respectfully submitted,

Paul J. McNulty  
United States Attorney

By: \_\_\_\_\_  
Stephen P. Learned  
Assistant United States Attorney

Seen and Agreed:

\_\_\_\_\_  
Gregory S. Horton

\_\_\_\_\_  
Judith L. Wheat, Esq.  
Counsel for Gregory S. Horton